IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest of J.F., A.R., and S.R., persons under eighteen years of age. _____ L.F., Appellant, v. State of Utah, Appellee.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20050984-CA F I L E D (January 20, 2006) 2006 UT App 18

Third District Juvenile, Salt Lake Department, 150578
The Honorable Robert S. Yeates

Attorneys: Russell S. Pietryga, Salt Lake City, for Appellant
Mark L. Shurtleff and John M. Peterson, Salt Lake City, for Appellee
Martha Pierce and Tracy S. Mills, Salt Lake City, Guardians Ad Litem

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Before Judges Bench, Billings, and Thorne.

PER CURIAM:

L.F. appeals the termination of her parental rights. First, she contends that the district court erred by allowing the testimony of witnesses from the House of Hope. Second, L.F. contends the court abused its discretion by allowing testimony of a witness not designated on the State's witness list. Finally, she challenges the sufficiency of the evidence to support both the determination that her parental rights should be terminated and the best interests determination.

L.F. incorrectly states that the House of Hope witnesses "invoked the physician-patient privilege" on her behalf. See Utah R. Evid. 506. Prior to trial, the witnesses informed the State's counsel that the release that had allowed them to provide information on L.F.'s court-ordered treatment had expired and

they would be unable to testify. L.F. also did not personally invoke the privilege. Her objections were that the testimony was "problematic," "bad public policy," and cumulative. Accordingly, the only issue presented to the juvenile court for determination, and preserved for appeal, concerned the admissibility of the evidence under federal regulations.

Evidence of a patient's diagnosis, treatment, or referral to an alcohol or drug abuse treatment facility is allowed only by the patient's written consent or by an authorizing court order in accordance with federal regulations. See 42 C.F.R. § 2.13 (2005). The provisions of 42 C.F.R. § 2.64 contain "[p]rocedures and criteria for orders authorizing disclosures for noncriminal purposes." Id. § 2.64. The patient must be provided with adequate notice of a request to disclose patient records and be allowed to either appear or file a written response. See id. § 2.64(b)(2). L.F. did not object to notice, and she was allowed to respond at the hearing. The juvenile court made both oral and written findings supporting admissibility under 42 C.F.R § 2.64. L.F. does not challenge the sufficiency of those findings. Accordingly, based upon the court's compliance with the federal regulations, we conclude that the testimony was properly admitted.

L.F. contends the juvenile court erred in allowing testimony of a witness from House of Hope who was not included on the State's witness list. "The court has broad discretion in determining whether to allow a witness to testify and this court will not reverse such ruling unless it abused that discretion, substantially affecting [L.F.'s] rights." In re A.M.S., 2000 UT App 182,¶16, 4 P.3d 95. To determine whether the juvenile court abused its discretion in allowing a witness to testify, we consider whether the testimony "could have been reasonably anticipated . . . or whether the testimony constituted unfair surprise." Gerbich v. Numed, Inc., 1999 UT 37,¶16, 977 P.2d 1205. The juvenile court reasoned that because other witnesses from House of Hope were listed on the witness list, L.F. could have reasonably anticipated that House of Hope staff, including the substitute witness, would testify, and that L.F. was not unfairly surprised. We conclude that the juvenile court did not abuse its broad discretion in allowing the witness to testify.

L.F. challenges the sufficiency of the evidence supporting both the determination of the grounds for termination and the best interests determination. We "review the juvenile court's factual findings based upon the clearly erroneous standard." In re E.R., 2001 UT App 66,¶11, 21 P.3d 680. "[T]he juvenile court in particular is given a 'wide latitude of discretion as to the judgments arrived at' based upon not only the court's opportunity to judge credibility firsthand, but also based on the juvenile

court judges' 'special training, experience and interest in this field, and . . . devot[ed] . . . attention to such matters . . . . .'" Id. (citations omitted). Finally, a challenge to the determination based upon the findings is reviewed for correctness. See In re C.K., 2000 UT App 11,¶17, 996 P.2d 1059.

L.F. does not challenge any specific ground for termination. She essentially argues that the requirements for return of the children were modified by the caseworker's request for a drug test and verification of appropriate housing and stable employment. The requests were prompted by the possibility that the House of Hope witnesses might not be allowed to testify. Although it was undisputed that L.F. remained drug free during the case, the evidence also demonstrated that she did not successfully complete peer parenting or parenting instruction; she consistently had difficulty implementing the training she did complete; she did not comply with her safety plan precluding contact with the father; and she did not understand the danger to the children posed by contact with the father. She was unsuccessfully terminated from both her treatment program and the drug court. The evidence was sufficient to support the findings and the determination to terminate parental rights.

The evidence was also sufficient to support the best interests determination. The evidence supports the findings that the needs of the children were being met in their legal risk placement, they were integrated into the family and bonded with the legal risk parents, and those parents wished to adopt them. The relatively short duration of the placement was one factor to be weighed by the juvenile court. The court also confirmed that it had considered the factors enumerated in Utah Code sections 78-3a-409 and -410. See Utah Code Ann. §§ 78-3a-409 to -410 (2002).

We affirm the termination of L.F.'s parental rights.

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Russell W. Bench,
Presiding Judge

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Judith M. Billings, Judge

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William A. Thorne Jr., Judge